

1 UNITED STATES BANKRUPTCY COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 Case No. 08-13555-scc  
4 - - - - - x  
5 In the Matter of:  
6 LEHMAN BROTHERS HOLDINGS, INC.,  
7 Debtors.  
8 - - - - - x  
9 ADV. CASE NO.: 13-01341-scc  
10 In the Matter of:  
11 LEHMAN BROTHERS HOLDINGS, INC.,  
12 Plaintiff,  
13 v.  
14 SYNCORA GUARANTEE, INC.  
15 Defendant.  
16 - - - - - x  
17 United States Bankruptcy Court  
18 One Bowling Green  
19 New York, New York  
20  
21 February 19, 2014  
22 10:06 a.m.  
23 B E F O R E :  
24 HON SHELLEY C. CHAPMAN  
25 U.S. BANKRUPTCY JUDGE

Status Conference

Doc. #42754 Motion of Lehman Brothers Holdings, Inc.

Pursuant to Bankruptcy Rule 9019 for Approval of Settlement  
Agreement Regarding Claims of Federal Home Loan Mortgage  
Corporation Filed by Alfredo R. Perez on behalf of Lehman  
Brothers Holdings, Inc.

Adversary Proceeding: 13-01341-scc Lehman Brothers  
Holdings, Inc. v Syncora Guarantee, Inc. Doc. #16 Lehman  
Brothers Holdings, Inc.'s Notice of Motion and Motion for  
Summary Judgment of Its Adversary Complaint Against Syncora  
Guarantee, Inc. filed by Glenn E. Siegel on behalf of Lehman  
Brothers Holdings, Inc.

Transcribed by: Sherri L. Breach, CERT\*D-397

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1 P R O C E E D I N G S

2 THE COURT: How are you?

3 MR. CANTOR: Good morning

4 MR. PEREZ: Good morning, Your Honor.

5 THE COURT: Good morning.

6 MR. PEREZ: Alfredo Perez on behalf of the LBHI,  
7 the plan administrator.

8 Your Honor, there are two matters on the agenda,  
9 the state of the estate and then the motion -- the 9019  
10 motion with Freddie Mac.

11 THE COURT: Right.

12 MR. PEREZ: If I could flip the order --

13 THE COURT: Sure.

14 MR. PEREZ: -- and let a lot of people go.

15 So, Your Honor, I'm happy to be here to report on  
16 this 9019. As the Court is aware, even from its short  
17 tenure in this case --

18 THE COURT: Right.

19 MR. PEREZ: -- this has had a very long history.

20 Your Honor, in essence, we're resolving two  
21 claims. One is what we call the loan claim, which is a \$1.2  
22 billion, approximately, claim, in which we had a dispute as  
23 to its classification. Freddie Mac taking the position that  
24 it was subject to here a priority and we took the position  
25 that it was just a borrowed money claim.

1           Additionally, Your Honor, we have almost a billion  
2           dollars worth of servicing related claims. We have a  
3           declaration from Mr. Zach Trump (ph) who is in the courtroom  
4           talking about the merits of that.

5           THE COURT: Uh-huh.

6           MR. PEREZ: But, in essence, we bought whole --  
7           Freddie bought whole loans from LBHI, made reps and  
8           warranties. So approximately \$934 million of that is as a  
9           result of reps and warrants. An additional 27 million is on  
10          so-called servicing claims. Freddie takes the position that  
11          those are post-petition admin claims that would be payable  
12          100 cents on the dollars. Obviously, we dispute that, but  
13          that was another dispute.

14          So as a result of the motion that we filed that  
15          went up to the District Court, it -- the reference that came  
16          back down, et cetera, we had to find, in essence, a creative  
17          way to settle this otherwise we would be litigating for a  
18          long time, and we do have a \$1.2 billion cash escrow in  
19          addition to a \$900 million claim escrow. So we've got the  
20          two escrows totaling in excessive of \$2 billion.

21          So by the payment of the \$767 million, we  
22          purchased the claims. Those claims are now -- would now be  
23          owned by LBHI.

24          In addition, Your Honor, and very important, we  
25          get, in essence, the back of the loan file so that we can

1 make claims against the people who we purchased who made  
2 reps and warranties to us who we purchased. Similar to what  
3 we did with Fannie. I do have an amended order. There were  
4 some numbers --

5 THE COURT: Okay.

6 MR. PEREZ: -- that were missing. So I want to --  
7 or that are actually not correct, just a few. But I have an  
8 amended order which actually attaches the loan that the --  
9 the correct loan numbers.

10 But other than that, I --

11 THE COURT: All right. That's the -- that was  
12 filed at Docket 42907?

13 MR. PEREZ: Exactly, Your Honor.

14 THE COURT: Okay.

15 MR. PEREZ: But -- but it -- because we have these  
16 two competing charts, what I would like to do is the order  
17 that the Court enters actually have --

18 THE COURT: Sure.

19 MR. PEREZ: -- it attached so there's no --

20 THE COURT: Okay.

21 MR. PEREZ: -- question as to which is the correct  
22 one.

23 THE COURT: All right.

24 MR. PEREZ: And with that, Your Honor, I would  
25 request entry of the -- of the motion.

1 THE COURT: Okay. And you said that it -- we have  
2 the supporting declaration, correct?

3 MR. PEREZ: We have a supporting declaration from  
4 Mr. Trump with respect to the rep and warrant. I think with  
5 respect to the issue of the HIRA (ph) priority, that's been  
6 the subject of extensive briefing. I think it's really a  
7 legal question at --

8 THE COURT: Right.

9 MR. PEREZ: -- this point. The Court would have,  
10 you know, decided, had we gone forward.

11 THE COURT: Right.

12 MR. PEREZ: I don't know that we have any -- the  
13 facts are not disputed. We got --

14 THE COURT: Right.

15 MR. PEREZ: -- a billion-two was payable the day  
16 of the bankruptcy and it's how you characterize those facts.

17 THE COURT: Okay. Does anyone else wish to be  
18 heard with respect to the motion of LBHI for approval of the  
19 settlement of the claims of the Federal Home of Loan  
20 Mortgage Corporation?

21 All right. Very good. I'm very happy --

22 MR. PEREZ: Thank you, Your Honor. I do have --

23 THE COURT: -- to approve the settlement.

24 MR. PEREZ: -- a copy of the redline of the order  
25 and as well as the actual --



1 THE COURT: Okay.

2 MR. PEREZ: -- order. Do you want -- would you  
3 like to look at that?

4 THE COURT: Yes. If you would hand that up, that  
5 would be great.

6 Okay. All right. So we'll get that entered  
7 shortly later this morning.

8 So that -- other than the status, that's all that  
9 was on -- is on for this morning, right? The adversary --

10 MR. PEREZ: Correct, Your Honor.

11 THE COURT: -- proceeding apparently was adjourned  
12 to this afternoon --

13 MR. PEREZ: Correct.

14 THE COURT: -- rescheduled for this afternoon?

15 MR. PEREZ: Yes.

16 THE COURT: Okay. All right.

17 MR. PEREZ: So, Your Honor, Matthew Cantor who is  
18 the EVP and -- of legal affairs and the chief general  
19 counsel is going to be the one presenting the state of the  
20 estate.

21 THE COURT: Okay. Excellent.

22 MR. PEREZ: Thank you, Your Honor.

23 THE COURT: Thank you, Mr. Perez.

24 (Pause)

25 THE COURT: Good morning, Mr. Cantor. How are

1 you?

2 MR. CANTOR: I'm okay, Your Honor. I apologize  
3 for the delay this morning. It was --

4 THE COURT: No problem.

5 MR. CANTOR: Thank you.

6 We just thought it would be worthwhile, and  
7 appreciate you giving us a little bit of time, to give you a  
8 state of the estate, introduce who we are, who Lehman is,  
9 who you'll be seeing before you over the next --

10 THE COURT: Okay.

11 MR. CANTOR: -- couple of years, I suspect. I  
12 have folks from Weil Gotshal here who can answer probably a  
13 lot more questions than I can. I'm basically the chief  
14 legal officer at Lehman.

15 You know, it the largest chapter 11 case in  
16 history. There was \$639 billion of assets when it filed.  
17 There were \$613 billion of liabilities. It was a legendary  
18 bankruptcy case. The company emerged from bankruptcy on  
19 March 6th, 2012 and it basically emerged as a corporation  
20 engaged in the business of liquidating itself and the 22  
21 other debtor subsidiaries and the thousands of entities.  
22 It's an amazing place to have gotten to see. There's  
23 thousands of entities. And we're in the business of  
24 dissolving many, many, many companies that we pay.

25 We basically operate as 23 different debtors.

1 LBHI, which was the ultimate holding company, was authorized  
2 to be the plan administrator for all these post-emergence  
3 debtors. The plan administrator was granted broad authority  
4 to wind down the business exercising its business judgment  
5 as a fiduciary, as a trustee for all these debtors.

6 Virtually everything that gets done gets done  
7 without court approval. Large settlements, like the one we  
8 just brought to you, will need court approval pursuant to  
9 the plan.

10 THE COURT: My understanding is that the threshold  
11 of most instances is \$200 million?

12 MR. CANTOR: Yes. Matters of 200 million or more  
13 we bring to the Court for a 9019 motion.

14 THE COURT: Then the 200 million refers to the  
15 amount that's at issue or the amount of the settlement?

16 MR. CANTOR: I believe it's the amount of the  
17 claim, but those --

18 THE COURT: Of the claim.

19 MR. CANTOR: It's the --

20 MR. PEREZ: Right.

21 MR. CANTOR: Yeah. They told me that. The claim  
22 amount.

23 THE COURT: Right. Okay.

24 MR. CANTOR: So LBHI is effectively run by seven  
25 directors. They're highly experienced, you know, business

1 professionals. They're very active in their oversight of --  
2 and management of the liquidation. I think of them as  
3 effectively trustees as you would think of a Chapter 7  
4 trustee.

5 It's a very active board model. The directors  
6 have organized themselves on different subcommittees and  
7 with their specialties focusing on different types of assets  
8 and different types of disputes. And, you know, there's  
9 weekly reporting from the -- at the management team into the  
10 committees and it's very collaborative. And they're working  
11 real hard and they'll create a lot of value, I think, from  
12 what I've seen.

13 The post-emergence governance was a hotly  
14 negotiated topic during the bankruptcy case. These seven  
15 directors were chosen by consensus of a committee that  
16 represented all the major creditor constituencies in the  
17 case. The general unsecured committee was represented. The  
18 foreign affiliate representatives were represented; holding  
19 company creditors were represented; operating company  
20 creditors. There was -- and management was represented to  
21 ensure that we had a group of folks managing the post-  
22 emergence debtors in a way that was different to any  
23 individual creditor group, but looking to, you know, achieve  
24 its goal.

25 THE COURT: It -- in light of that comment -- you

1 may be getting to this -- but could you include an  
2 explanation of their compensation structure?

3 MR. CANTOR: The -- I couldn't give you great  
4 detail on the compensation structure. I read it about a  
5 year ago, but it's very complicated. But it is -- there is  
6 some discretionary portion -- not discretionary. There's  
7 some --

8 THE COURT: Incentive compensation.

9 MR. CANTOR: -- incentive compensation --

10 THE COURT: Okay.

11 MR. CANTOR: -- based upon whether the credit --  
12 whether the recoveries exceed some estimates that were --

13 THE COURT: Okay.

14 MR. CANTOR: -- in the disclosure statement.

15 THE COURT: So there's -- there's baseline  
16 compensation in terms of a monthly or hourly or yearly rate,  
17 and then there's additional incentive compensation?

18 MR. CANTOR: Right. There's a baseline comp with  
19 a incentive piece. It's driven primarily by increase  
20 percentage distributions to creditors. There is some -- I  
21 think it's a very small factor -- acceleration in terms of  
22 speed.

23 But I would tell you that as we, you know, engage  
24 in the liquidation, both at the management level and I know  
25 at the board level, it's interesting to be -- we have no, as

1 we say, no one has an ax in -- where it comes out. What  
2 we're trying to do is make sure we get to the right place.

3 I thought the way we wrote it in the last balance  
4 sheet, what the objective is is that the company continues  
5 to pursue the objective of asset value maximization and  
6 timely distributions to creditors with available cash through  
7 the optimal execution and orderly wind down process, and the  
8 judicious and timely resolution of claims.

9 The messaging is that while we're doing this as  
10 fast as reasonably possible, we're doing it with an eye  
11 towards maximizing value and balancing the speed of that.  
12 And, likewise, on the claims side we're working real hard to  
13 get the claims down and resolve as many disputes as we can,  
14 and balancing that with the cost of doing that in the  
15 fairest and most judicious way. And, also, being mindful of  
16 the Court's time, too.

17 So far the estate has made distributions of about  
18 \$60 billion. That includes distributions, when you think  
19 about the -- it's a plan with a waterfall. There's  
20 distributions among debtors. So 40 million of that 60 has  
21 been distributed out, but we -- you may see a headline of  
22 \$60 billion or so of distributions. That includes amounts  
23 re-circulated --

24 THE COURT: Out of the Lehman family, in other  
25 words?

1 MR. CANTOR: Yes. Forty million out of the Lehman  
2 family.

3 And, again, just to reiterate, the goals are --  
4 the boards goals and our goals are to market the assets and  
5 to obtain maximum value.

6 Obviously, we're also looking to resolve disputed  
7 claims in a judicious way, but do it as timely as we can  
8 because there is a cost to having disputed claims and we  
9 reserve against those claims.

10 And, of course, we have a pragmatic view of the  
11 Court's time and we're very mindful of maximizing the  
12 Court's resources here. And I'll get into the -- so -- I  
13 mean, the case has been, you know, a great success in so  
14 many ways. The alternative dispute resolution process and  
15 the sheer number of dollars of claims and disputes that have  
16 been resolved by the Weil Gotshal folks outside the court  
17 has been extraordinary.

18 Thinking about the left side of the balance sheet,  
19 the assets remaining, there is about \$9.3 billion of assets  
20 remaining to be monetized from operations. That includes  
21 recoveries from affiliates -- we have a lot of foreign  
22 affiliates that we're expecting recoveries from -- and  
23 litigation recoveries, which I'll briefly talk about.

24 There are a few other significant assets to sell,  
25 private equity investments, not a lot of real estate left to

1 sell. And, like I said, we have receivables from foreign  
2 affiliates, non-controlled affiliates really represents the  
3 greatest number of dollars left to be received.

4 One affiliate that I would point is the Lehman  
5 Brothers Finance, A.G., which is the Swiss affiliate which  
6 was in a Swiss receivership, is a very large portion of the  
7 dollars remaining from foreign affiliates. Judge Peck was  
8 instrumental in helping us get a settlement done about a  
9 year ago that resolved huge disputes, you know, \$10 billion  
10 of claims on the Swiss side, \$6 billion of claims on the  
11 U.S. side, and it was -- enabled -- will enable the estate  
12 to unlock a tremendous amount of value.

13 That deal had been approved recently by the Swiss  
14 Financial Market Supervisory Authority, which we call FIMA  
15 (sic), and we're hoping to get that soon. The effectiveness  
16 of the settlement has been delayed. A Swiss -- purported  
17 Swiss creditor, we -- the name is very hard for me to  
18 pronounce in German, but we refer to him as Klaus Teshira  
19 (ph) is a Swiss creditor who has objected to the settlement  
20 over there and proposed additional claims. We've been  
21 trying to find a way to move a resolution with him along.  
22 He had claims here in the states, withdrew those claims to  
23 get out of sort of having to deal with us here.

24 We've initiated an avoidance action against Klaus  
25 Teshira. We're in the middle of discovery on that. We



1 think it's -- they've resisted the discovery. We think it's  
2 really important that we keep that moving forward. I think  
3 that will help break the log jam if we can move the  
4 litigation along here. That's one of the things -- some of  
5 the things I'm going to identify for you is what are the  
6 things you may see coming to the court that you need to be  
7 ready for, and that's certainly one of them. We're working  
8 hard on getting it resolved, but that's a hot litigation  
9 here.

10 THE COURT: Okay. I meant to ask, Mr. Perez, the  
11 claims that are being acquired by LBHI as a result of this  
12 settlement --

13 MR. PEREZ: Right.

14 THE COURT: -- are those claims that will be  
15 brought here or in other courts, assuming that --

16 MR. PEREZ: Well --

17 THE COURT: -- that they are eventually claims  
18 that would be lodged.

19 MR. PEREZ: So there's really three types of  
20 claims. There's -- there is a claim that will be an LBHI  
21 class 3 claim, which is the 1.2 billion. There is a claim  
22 which will be a class 7 claim, and then there are hundreds  
23 of the smaller claims --

24 THE COURT: Those are --

25 MR. PEREZ: -- which will be brought wherever we

1 can find who gave -- made the reps and warrants.

2 THE COURT: Okay. But not necessarily here?

3 MR. PEREZ: Not necessarily here.

4 THE COURT: Okay. Thank you.

5 MR. CANTOR: And I just -- just as an aside there,  
6 we did a -- we had a very, I think, favorable resolution  
7 with Fannie May. I think this resolution with Freddie Mac  
8 was very favorable. Part of that, because we were giving up  
9 claims or value on account of mortgages that they claimed we  
10 sold to them -- they would have violations and breaches in  
11 the reps and warranties -- we bought many of those.

12 Now Mr. Trump, who you'll probably see again, and  
13 our folks out in Denver have been in the business over the  
14 past couple of years pursuing count -- downstream  
15 counterparties on account of claims we have. These  
16 mortgages that we're going to get back or mortgage files  
17 we're going to get back from Fannie and Freddie are going to  
18 go into that where we can continue monetizing those assets  
19 for the estate.

20 THE COURT: Okay.

21 MR. CANTOR: I would say there -- the value is  
22 speculative, not to suggest there isn't any, but it's very  
23 hard to get an idea of what it's worth because --

24 THE COURT: All right.

25 MR. CANTOR: -- so many of those counterparties

1 aren't in business anymore.

2 And we've brought claims all over the country in  
3 state courts and federal courts looking for the most  
4 appropriate jurisdiction to do that. We have not yet  
5 brought those here.

6 THE COURT: Okay.

7 MR. CANTOR: The second big piece of litigation or  
8 litigations is during the bankruptcy case the estate reached  
9 a resolution with all of its major banks, all of its major  
10 counterparties save three: JPMorgan, Citi and Credit Suisse.  
11 Those litigations particularly -- well, all three of them  
12 derived -- claims derive in part from termination of  
13 business and all the underlying -- hundreds of underlying  
14 transactions. And there's disputes over the value of those  
15 claims and what the value of the underlying collateral was.

16 With Citi and JPM there's disputes as to the  
17 validity of their collateral security arrangements. So  
18 there will be challenges to their liens.

19 With JPM there's a major challenge as to how JPM  
20 liquidated the collateral securities that they had. They  
21 proposed a deficiency claim against us for a shortfall in  
22 the collateral securities. So we've challenged that.

23 Those are the types of litigation you're going to  
24 see here. We have additional litigation -- and right now  
25 we're in -- we're steep in discovery. Document -- documents

1 are being shared and we're beginning to set up depositions  
2 on experts in the JPM case and the custodians in the Citi  
3 case. We haven't gotten that far in the Credit Suisse case.

4 Also, in the JPM case the estate has affirmative  
5 claims against JPM. JPM requested -- demanded a jury trial.  
6 I -- so that case is pending before Judge Sullivan. We call  
7 it the collateral case. So --

8 It's with Judge Sullivan, right, Judge Sullivan?

9 And so that's an affirmative case we have raising  
10 a bunch of issues. Judge Peck dismissed many of our claims  
11 under the safe harbor provisions and 546(g), but I think 24  
12 claims remain. Claims like an actual -- actual fraudulent  
13 conveyances, violations of the automatic stay, things that  
14 weren't protected by 546.

15 And we're moving forward. We are in mediation  
16 with JPM. We've chosen a mediator. We've had some sessions  
17 and we continue to work at that, the parallel track with the  
18 litigation.

19 But needless to say that's after the affiliate  
20 recoveries, the foreign affiliate recoveries, that's --  
21 those are the largest recoveries. You know, if we're  
22 successful in getting those claims to a -- where we think  
23 they should be, that will bring collateral security back  
24 into the estate which we can distribute to creditors.

25 You may see some issues of post-petition interest.

1 You have a secured creditor holding cash collateral on a  
2 claim we think is too big and it's taking a long time to  
3 work that out. So you may see some questions about interest  
4 accruals.

5 The other large litigation that you're going to be  
6 seeing is litigation around special purpose vehicles. All  
7 right. Lehman had set up a bunch of SPVs. In many of these  
8 deals, there were -- when the case commenced, the rights of  
9 the noteholders versus Lehman as the residual were altered  
10 by the commencing of the case and the termination of certain  
11 rights. We've challenged that.

12 These particular vehicles we're talking about are  
13 vehicles where the assets in the trust, in the SPV, got  
14 distributed out to noteholders. And we've gone out and  
15 looked for them and sued them. We've initiated avoidance  
16 actions. We're trying to recover that property. We have  
17 all of that -- all those disputes in an alternative dispute  
18 resolution regime and we're trying to work that out. All  
19 the litigation was stayed and Judge Peck, his last order  
20 that he entered was an order staying that litigation through  
21 May --

22 THE COURT: Through May.

23 MR. CANTOR: Through May. Great. Thanks.

24 (Laughter)

25 THE COURT: Right.

1 MR. CANTOR: So we're presenting a protocol.  
2 We're work -- trying to work out a protocol to manage that  
3 litigation. But I suspect that's going to -- that could  
4 take a fair bit of judicial resources --

5 THE COURT: Okay.

6 MR. CANTOR: -- to manage. And Ms. Marcus is  
7 going to -- she'll know more about that.

8 Last huge asset of the estate is the distributed  
9 claims reserve. There's 12.8 billion of cash in that  
10 reserve. All the investors on the street, now after looking  
11 to see what we get in from the foreign affiliates, watch  
12 that distributed claims reserve very carefully. They want  
13 to see what's coming out and when it's coming out. And  
14 we're mindful of that. And we do -- we know -- our  
15 creditors, you know, those who put in claims, are mindful of  
16 that. They know there's some tension there. We're maybe  
17 looking to get that done faster. But we -- one of our  
18 biggest challenges is balancing the time versus trying to do  
19 what's right. And so there --

20 THE COURT: How -- I assume that the \$12 million  
21 is held in something that there is a phenomenal interest  
22 rate of something like .01 percent of something like that.

23 (Laughter)

24 MR. CANTOR: Yeah. It actually has been shocking  
25 at how little you can make on your money when you have to,

1 but we're doing our best, and I can get you an answer on  
2 what the real rate is --

3 THE COURT: I'm assuming that it's something  
4 virtually trivial.

5 MR. CANTOR: Well, we actually --

6 THE COURT: Very trivial.

7 MR. CANTOR: The board has actually come up with a  
8 -- I think a very smart, but safe way. I was in -- sort of  
9 involved in the meetings where they found -- I'm trying to  
10 think about what we've disclosed, but we have it invested in  
11 the most aggressive and high-yielding stuff that we could do  
12 within the context of the risk we're allowed to take.

13 THE COURT: Okay.

14 MR. CANTOR: And I know it's been a hot topic and  
15 the folks doing it are the best guys in the world doing it.

16 So there's about 4,000 claims remaining to be  
17 resolved. And it started out as 69,000, so we're down to  
18 sort of the creaky last eight or nine percent. And those  
19 are the folks -- you know, we resolved most of these claims  
20 either because, you know, they're an omnibus, you know,  
21 objection or most of it's been resolved consensually. You  
22 know, the estate is pretty much taking down the middle views  
23 on what claim amounts should be and we generally the folks  
24 there. The mediators have been great helping us get there.

25 So the -- a lot of the folks we're left with are

1 the ones we're not really able to -- where we're going to  
2 need some judicial help to get to the right place.

3 So of that 4,000, it's about \$124 billion worth of  
4 claims in that 4,000. The estate started with \$1.3 trillion  
5 of claims, so, obviously, I mean, they've made tremendous  
6 progress.

7 Of the 4,000, 1,000 are likely to be subject to an  
8 omnibus type objection, meaning they're not -- so claims  
9 you're going to see is one-offs. And many of those are  
10 grouped in claims. What you'll hear about next, I'll talk  
11 about our large remaining claims. The largest -- some of  
12 the largest are our R&BS type claims. We had the claims in  
13 from Fannie and big claims in from Freddie, and we worked  
14 real hard and we just got those done.

15 What remains in terms of large claims is we have  
16 all the private label trustees, all the securitizations that  
17 weren't sold to the GSCs, but were sold to the street.  
18 There's about three to 400 claims of the 4,000 claim numbers  
19 picked up in that. So if and when we get the private label  
20 trustee -- you know, claims next, we can take out three or  
21 400 of those.

22 So there will be -- there will be types of claims  
23 that we'll be able to knock out large blocks of that number.

24 The plan was to get a deal done with Fannie and a  
25 deal done with Freddie, and then go work and try



1 (indiscernible). That's what we're focusing on next.

2 So the aggregate amount of claims in the R&BS area  
3 was 58 billion. Freddie was a couple of billion and Fannie  
4 was a couple of billion. So most of that is in the private  
5 label. That's to come.

6 The next large claim that we've been unable to  
7 resolve in sort of a dispute, alternative dispute resolution  
8 context is the -- you know, Lehman -- LBL, Lehman Brothers  
9 in London had some space at the Canary Warf and there's a --  
10 an allegation of a guarantee by the holding company of the  
11 lease. There's a lot of noise around this one, but it's a  
12 \$780 million claim the estate thinks it's left. Briefing,  
13 if it hasn't been completed already, it will be shortly.  
14 Discovery's done. We tried to mediate it. It has been  
15 unsuccessful. That's going to get teed up for Your Honor.

16 The next, which you have on your calendar for a  
17 trial in April --

18 THE COURT: Uh-huh.

19 MR. CANTOR: -- is our objections to reclassify  
20 these RSU, restricted stock unit claims of former employees.  
21 So that's going to hit your calendar and it's something  
22 we're going to need your time on.

23 So as I said before we -- the estate has a good  
24 track record and has an amazing amount of information that  
25 we generate -- that Peter (sic) generates every month in

1 terms of how many claims are being resolved by the  
2 alternative dispute resolution process. And Your Honor will  
3 see those reports every month, and we hope to be able to  
4 continue in the same type of resolution paradigm that we had  
5 before.

6 There are, let me see, 302 settlements that were  
7 achieved pursuant to the ADR procedures on -- and these were  
8 due to the estate type claims. We brought in \$2.1 billion  
9 that way. We were 91 percent effective; 91 percent of all  
10 the collection matters that went to dispute resolution were  
11 successful.

12 So we -- you know, we look forward to working with  
13 your chambers the way we did with Judge Peck's chambers and  
14 managing the calendar, and everything -- we have everything  
15 -- because we have lots of different attorneys.

16 THE COURT: I've noticed.

17 MR. CANTOR: But everything -- the calendar is  
18 managed through Moe (sic) and the people at Weil Gotshal and  
19 we help -- we help to keep it a little organized for you and  
20 a little less helter skelter.

21 So the things that ended up coming to you are  
22 obviously the things we've reached an impasse on.

23 THE COURT: Okay.

24 MR. CANTOR: Our rate of reaching impasse is  
25 higher because we're down to that creaky --

1 THE COURT: I understand.

2 MR. CANTOR: -- five to eight percent. And  
3 sometimes we come across a legal issue, you know, and, you  
4 know, we're trying to resolve something with a creditor.  
5 You may see something very shortly if we have that type of  
6 issue where we just can't get there -- anywhere close on a  
7 legal issue and everyone thinks they're right on a legal  
8 issue, or at least we can't get the other side to agree  
9 there's some riff there.

10 THE COURT: Right.

11 MR. CANTOR: And then we -- we sort of tear the  
12 Band-Aid off and present it to Your Honor --

13 THE COURT: Right.

14 MR. CANTOR: -- for resolution.

15 THE COURT: And I assume that when you get to an  
16 issue like that, if there are other similarly situated  
17 issues, that you would bring that to my attention. In other  
18 words, if the resolution of a particular dispute is going to  
19 have an impact or be law of the case with respect to a  
20 similar issue between other parties that you would bring  
21 that to my attention.

22 MR. CANTOR: Absolutely, Your Honor. We -- we've  
23 had that in the past and we've very clear we don't want to  
24 sort of pull a fast one with the little guy and get  
25 everybody swept into that.

1 And we try real hard to make sure we know who is  
2 litigating what in the estate.

3 THE COURT: Right. Okay.

4 MR. CANTOR: So in terms of numbers -- so,  
5 currently, there's 46 adversary proceedings pending; 41 of  
6 them have been commenced by us, the remainder commenced by  
7 the other side.

8 And so far as I can tell now that's what I would  
9 expect you should be seeing coming down the pipe for Your  
10 Honor to be -- the litigation with -- on LBF, we have some  
11 litigation this afternoon with Syncora which was a mono-line  
12 that insured some of our private label R&BS.

13 And then I'm happy to answer any questions and for  
14 every other one that I can't answer, that's why I've made  
15 sure we had everyone here.

16 THE COURT: Okay. That was very helpful. From my  
17 perspective these are big shoes to fill. I said that at the  
18 first hearing, but we're going to do our best. We're going  
19 to do our best also to continue with some continuity in  
20 terms of the way you folks grew accustom to doing things  
21 with Judge Peck over the last four to five years.  
22 Invariably, there might be some differences, but you should  
23 never hesitate to contact chambers and let us know your  
24 druthers.

25 I mean, my perspective is that we're here to serve

1 you and continue to get this done, and we'll give you as  
2 much of our time as you -- as you would like.

3 So I look -- very much look forward to working  
4 with all you and I --

5 MR. CANTOR: Likewise.

6 THE COURT: -- appreciate the overview.

7 MR. CANTOR: Thanks.

8 THE COURT: If I could ask, it would be very  
9 useful to me, actually, to have a transcript of your  
10 remarks, Mr. Cantor. So if somebody --

11 MR. PEREZ: we'll get that --

12 THE COURT: -- could send that to us, that would  
13 be --

14 MR. PEREZ: We'll get that for you.

15 THE COURT: -- that would be very helpful.

16 MR. PEREZ: Yes.

17 THE COURT: All right.

18 MR. CANTOR: Okay.

19 THE COURT: Thank you.

20 MR. CANTOR: Thank you, Your Honor.

21 THE COURT: Thank you.

22 MR. CANTOR: See you this afternoon.

23 THE COURT: I think that's it.

24 MR. PEREZ: That's it for this morning.

25 THE COURT: This morning and then we're --

1 MR. PEREZ: And then --

2 THE COURT: -- going to reconvene at 2:00.

3 MR. PEREZ: Right.

4 THE COURT: Okay. Thank you all very much.

5 MR. PEREZ: Thank you. May we be excused?

6 THE COURT: Yes.

7 (Recess taken at 10:36 a.m.; reconvened at 2:09 p.m.)

8 THE COURT: Please have a seat.

9 How is everyone today?

10 MR. SIEGEL: Very good.

11 MR. CRAIG: Good. Thank you, Your Honor.

12 THE COURT: All right. Who would like to start,  
13 Mr. Siegel?

14 Ready when you are.

15 MR. SIEGEL: Good afternoon, Your Honor. Glenn  
16 Siegel from Morgan Lewis, here on behalf of Lehman. This is  
17 a -- these are actually, I guess, cross-motions for summary  
18 judgment in connection with Lehman's adversary proceeding  
19 seeking to disallow and subordinate a claim filed by Syncora  
20 in connection with a trust that they insured, the trust  
21 called the Green Point Mortgage Funding Trust 2006-HE1; that  
22 they had filed a claim in connection with the insurance that  
23 they provided to that trust, and the debtor takes the  
24 position that that claim is subject to disallowance and  
25 subordination essentially because it is duplicative of the

1 U.S. Bank claim, which also seeks recovery for the same  
2 losses.

3 There's actually two components to this which --

4 THE COURT: Right.

5 MR. SIEGEL: -- have to do with the --

6 THE COURT: So --

7 MR. SIEGEL: -- intra --

8 THE COURT: So let me --

9 MR. SIEGEL: Sure.

10 THE COURT: -- let me jump in --

11 MR. SIEGEL: Sure.

12 THE COURT: -- and see if I can translate this  
13 into some common language --

14 MR. SIEGEL: Okay.

15 THE COURT: -- okay because I'm going to want to  
16 -- as you know, I like to ask a lot of questions.

17 MR. SIEGEL: Not a problem.

18 THE COURT: Okay.

19 So there's something in the papers called the  
20 Syncora claim, right, and the Syncora claim, I take it,  
21 includes at least a claim against LBHI for \$527 million. Is  
22 that at least partially correct?

23 In other words, Syncora has paid out \$527 million  
24 --

25 MR. SIEGEL: That's correct.

1 THE COURT: -- to its insureds, to the  
2 noteholders.

3 MR. SIEGEL: That's correct.

4 THE COURT: Correct? And Syncora says that  
5 they've paid out that money because -- and I'm going to use  
6 shorthand -- shortfalls in the collateral.

7 MR. SIEGEL: Okay.

8 THE COURT: Right? I mean --

9 MR. SIEGEL: Essentially.

10 THE COURT: Essentially. Right. And Syncora also  
11 says that that claim would exist even if the mortgages --  
12 the mortgage documentation had been perfect and there were  
13 no repurchase -- there were no claims relating to the  
14 repurchase.

15 In other words, LBHI, in Syncora's view, could  
16 have absolutely done nothing wrong and yet there would have  
17 been -- there could have been a shortfall and Syncora would  
18 have been liable to the noteholders.

19 MR. SIEGEL: It is correct that the insurance  
20 obligation they have to the noteholders exists regardless of  
21 what claims they might assert against LBHI, if that's what  
22 you're saying.

23 THE COURT: With respect to the adequacy of the  
24 documentation so to speak, the reps and warranties claims.

25 MR. SIEGEL: The reps and warranties that they



1 assert were made to them in connection with them providing  
2 the insurance.

3 THE COURT: Yes. Okay. So Syncora also says  
4 that, therefore, that \$527 million is not contingent.

5 MR. SIEGEL: Okay.

6 THE COURT: Do you agree with that?

7 MR. SIEGEL: I agree that to the extent they've  
8 paid actual dollars --

9 THE COURT: Okay.

10 MR. SIEGEL: -- that the -- that 502 -- what is it  
11 --

12 THE COURT: 502(e)(1)(B) --

13 MR. SIEGEL: -- is inapplicable.

14 THE COURT: -- is inapplicable.

15 MR. SIEGEL: And that is the portion, to be clear,  
16 that we assert is subordinatable (sic) under 509.

17 THE COURT: Okay. All right. So then there is  
18 the -- then there are the -- there's the aspect of the  
19 Syncora claim vis-à-vis what it might pay the noteholders.  
20 That is TBD. In other words, for whatever reason, which I  
21 don't fully understand, but maybe in the course of the  
22 afternoon you can -- someone can explain it to me, claims  
23 have not yet been made and, therefore, Syncora has not yet  
24 paid to those noteholders.

25 MR. SIEGEL: That's right.

1 THE COURT: Correct? And do the parties dispute,  
2 putting aside the 509 aspect, do the parties -- I would like  
3 to understand the parties' position with respect to the  
4 contingent portion of that claim.

5 MR. SIEGEL: Okay. Let me start with one  
6 overriding important factor that the -- that I think you  
7 should understand.

8 What the estate has determined is that because  
9 they believe in the strength of this disallowance and  
10 subordination argument, for the purposes of this motion we  
11 will say that they have -- that they and U.S. Bank are  
12 asserting valid claims against the estate.

13 THE COURT: Right.

14 MR. SIEGEL: We are, in fact, contesting those  
15 claims as to their validity, but that's going on or that  
16 will go on to the extent to which this doesn't move that in.

17 THE COURT: But -- okay. But let me ask -- let me  
18 stop you and ask a question about that. So the -- break  
19 that down into two components.

20 The Syncora claim I view as a -- but for the  
21 massive complications regarding the -- how the documents got  
22 into the trust, et cetera, it's a -- almost a garden variety  
23 reimbursement claim of a financial -- of a guarantor.

24 MR. SIEGEL: I agree.

25 THE COURT: Right?

1 MR. SIEGEL: Yes.

2 THE COURT: I mean, that -- that's what it is.

3 MR. SIEGEL: That's what it is.

4 THE COURT: Okay. So there's that.

5 With respect to the trust claim, though, that's a  
6 damage claim.

7 MR. SIEGEL: That's right. That's right.

8 THE COURT: Right? That's a damage claim.

9 MR. SIEGEL: That's right. It's for -- well, yes.

10 It is -- well, it's a damages claim that give rise -- that  
11 is given rise to in connection with the sale of the  
12 mortgages --

13 THE COURT: Yes.

14 MR. SIEGEL: -- into the trust --

15 THE COURT: Into the trust.

16 MR. SIEGEL: -- where they assert that there were  
17 breaches of reps and warranties --

18 THE COURT: Yes.

19 MR. SIEGEL: -- there.

20 THE COURT: Okay.

21 MR. SIEGEL: The same mortgages that we're talking  
22 about were the mortgages that Syncora provided insurance for  
23 --

24 THE COURT: Right.

25 MR. SIEGEL: -- to assure that the cash flows

1 generated --

2 THE COURT: Right.

3 MR. SIEGEL: -- by those mortgages would be --

4 THE COURT: Okay.

5 MR. SIEGEL: -- sufficient to pay the notes.

6 THE COURT: Okay. So that -- yes. I totally  
7 agree with that.

8 But when you say that LBHI is, forget about for  
9 the purpose of this motion, disputing the validity of the  
10 claim, are you disputing the validity of the reimbursement  
11 obligation? In other words, if the whole trust claim side  
12 of it didn't exist, would LBHI be asserting that Syncora  
13 does not have a valid claim for reimbursement?

14 MR. SIEGEL: Yes. That's correct. Because their  
15 claim -- this is not a classic guarantee claim. This is not  
16 a claim where someone made a guarantee and then they pay on  
17 the guarantee and then there's several -- this is an  
18 insurance claim. They were paid a premium to risk -- to  
19 compensate them against risk of loss and that premium was  
20 their compensation for providing the guarantee like any  
21 other insurance policy.

22 What they assert under their claim is that in  
23 entering into the insurance agreement, that Lehman -- LBHI  
24 made representations to them that turned out not to be true  
25 that were material that give them a right to seek damages

1 from the party that induced them into entering into this  
2 insurance contract.

3 Our --

4 THE COURT: How does that affect the validity,  
5 though, of the guarantee -- of the insurance, if you will,  
6 that Syncora issued?

7 MR. SIEGEL: It has no effect on it. They are  
8 obligated to pay on this insurance to the beneficiaries come  
9 hell or high water.

10 THE COURT: Okay. And on what basis would LBHI be  
11 able to deny Syncora the right to request reimbursement?

12 MR. SIEGEL: From LBHI?

13 THE COURT: Yes. In other words --

14 MR. SIEGEL: It's not in the contract. The  
15 contract is an insurance contract. It's an insurance  
16 premium. I -- you know, I have a life insurance policy.  
17 And I have a beneficiary under the life insurance policy and  
18 I pay my insurance company premiums. When they pay out on  
19 that, there's no obligate -- there's no right of the  
20 insurance company, absent some misrepresentation, to go  
21 against the party who procured the insurance.

22 Now --

23 THE COURT: So it's -- so it's not -- because I  
24 thought I read something to the contrary -- give me one  
25 moment because I -- I thought I had read something directly

1 to the contrary.

2 MR. SIEGEL: Okay.

3 THE COURT: In other words, in the classic type of  
4 a guarantee there would be a provision that provides for a  
5 reimbursement obligation in the event of monies paid over.  
6 There is --

7 MR. SIEGEL: This is not --

8 THE COURT: -- nothing like that here?

9 MR. SIEGEL: This is not a guarantee. This is an  
10 insurance policy.

11 THE COURT: Okay. And it does not in -- there is  
12 no right of reimbursement for monies paid over?

13 MR. SIEGEL: I believe not, but now you have me  
14 worried so I'm going to turn and make sure I'm not  
15 misstating it.

16 Is that right? Right?

17 UNIDENTIFIED SPEAKER: Yes.

18 MR. SIEGEL: That's right. At least the three of  
19 us all think it's right.

20 THE COURT: All right. Give me one minute because  
21 I did make a lot of notes and I thought I had read something  
22 to the contrary.

23 (Pause)

24 THE COURT: Okay. Why don't you keep going?

25 MR. SIEGEL: Okay. So --

1 THE COURT: But -- oh, I'm sorry. But one more  
2 question. But under no -- under other than via a -- an  
3 action that says that LBHI did something wrong in failing to  
4 repurchase the notes or in the representations and  
5 warranties that accompanied the original placement of the  
6 notes into the trust, the noteholders would have no right to  
7 go against LBHI?

8 MR. SIEGEL: That's correct. They need the trust,  
9 the -- what is it, the Green Point Mortgage Funding Trust  
10 needs to demonstrate in order to prove their claim that  
11 there were reps and warranties that were made by Lehman that  
12 were breached that would give rise to what's called a put  
13 back claim, put back claim meaning the mortgages that were  
14 sold could be put back to the seller.

15 Lehman's belief is they did not make the reps and  
16 warranties and are not responsible for the reps and  
17 warranties that were made by the originator of the mortgage;  
18 that Lehman was effectively a conduit; that the only thing  
19 that Lehman did was they took the reps and warranties of the  
20 originator, which was Green Point. They packaged them.  
21 They sold them to the trust, and the only rep they made, as  
22 I understand it, was that they, in fact, owned those reps;  
23 that they could transfer them on.

24 As I understand it, U.S. Bank is making an  
25 assertion that the reps are -- go beyond that.

1 THE COURT: Okay. All right. I interrupted you  
2 at the outset, so why don't I let you keep going.

3 MR. SIEGEL: Okay. So I think, naturally, some of  
4 your questions have obviated the need for some of my  
5 argument. So I -- what I would like to do is simply talk  
6 about the two claims we're talking about now. There is the  
7 claim that the trustee filed and the claim the trustee  
8 filed, which we're talking about as of July 31st, 2009,  
9 asserts that they have repurchased claims for about 11,500  
10 mortgage loans that equal \$647,550,226.64. That claim is  
11 calculated based upon the trust's assumption as to what the  
12 values of the existing mortgages are and it represents,  
13 essentially, the shortfall in value.

14 Syncora -- I explain this to explain the disparity  
15 between the Syncora claim and the trust claim.

16 What Syncora has done is they have asserted a  
17 claim for the entire \$1.3 billion in face amount. They do  
18 not calculate any mitigation of damages for the value of the  
19 mortgages. Even if the mortgages are underperforming, it  
20 doesn't mean they're not generating revenue. It just means  
21 they're not generating as much revenue as one might have  
22 expected.

23 THE COURT: Okay. So let's pause on this point.  
24 So they've paid out \$527 million.

25 MR. SIEGEL: That's right.



1 THE COURT: And if somehow we could get to a  
2 mythical day called, the last day, right, and at the last  
3 day there's a shortfall of another \$100 million that Syncora  
4 has to pay out --

5 MR. SIEGEL: That's correct.

6 THE COURT: -- but that otherwise the noteholders  
7 have been made whole.

8 MR. SIEGEL: That's correct.

9 THE COURT: Then Syncora's aggregate hypothetical  
10 claim would be that \$627 million.

11 MR. SIEGEL: That would be their loss.

12 THE COURT: That would be their loss. And they  
13 say LBHI has to compensate us for that loss because it's --  
14 this is their position -- it's LBHI's fault.

15 MR. SIEGEL: That's the way I understand it.

16 THE COURT: Okay.

17 MR. SIEGEL: Now what Your Honor should also  
18 understand is that the indenture and what's called the  
19 transfer and servicing agreement contemplate this.

20 And under the indenture what happens is to the  
21 extent to which the insurer makes payment on claims as cash  
22 flow comes in to the trust, they get their share of that  
23 cash flow pursuant to a contract that they were part of  
24 negotiating with the trust as to how those losses would be  
25 reimbursed out of cash flow coming into the trust.

1 And the reason I make this point is because to the  
2 extent to which U.S. Bank proves a valid claim and  
3 distributions flow through the trust, they have  
4 contractually agreed in the waterfall as to how they get  
5 reimbursed for the payments they've made with respect to the  
6 insurance certificates.

7 THE COURT: So if not a penny more goes out other  
8 than the 527, monies that would come in would reduce the out  
9 of pocket down from the 527 under the waterfall?

10 MR. SIEGEL: They should, although I can't tell  
11 you I understand the complexities of the waterfall so  
12 totally that I know how much they would be reduced by.

13 THE COURT: Uh-huh.

14 MR. SIEGEL: The other thing that the Court should  
15 know is that Syncora has control rights over the trust. So  
16 that because they are the insurer, they are the control  
17 party and they make determinations as to the decisions the  
18 trust makes. And I would suggest that that also  
19 demonstrates everyone's understanding about who is really  
20 the beneficiary of the cash flows under the trust because of  
21 the insurance.

22 And this is all really designed to illustrate to  
23 the Court how these are really just two paths to recover as  
24 to the same loss, and which is why I've gone through that.

25 Now we talked about this a moment ago and I just

1 want to talk about it again for a second, which is the two  
2 parts of their claim. There is the -- there are their  
3 actual losses and then there are the hypothetical future  
4 losses that may happen in the future. You know, there's  
5 been a lot of litigation over R&BS. There's been a lot of  
6 experience over R&BS, and as a consequence people think they  
7 know what those losses will be.

8 But I don't believe that what people think they  
9 know losses will be in the future makes that claim move from  
10 being contingent to non-contingent. They haven't actually  
11 paid those amounts to the trust, and I think under  
12 502(e)(1)(B) that means since they haven't actually paid  
13 those claims can only be asserted by the party who has the  
14 insurance, which would be U.S. Trust -- I'm sorry -- U.S.  
15 Bank and not them. So I think 502(e)(1)(B) disallows their  
16 claim to the extent it exceeds their out of pocket costs.

17 THE COURT: So disallows it to the extent that  
18 they want to retain the ability to assert something in  
19 excess of the 527.

20 MR. SIEGEL: That's correct.

21 Now I will say that at least the way I read the  
22 code if they incur future losses, they'll be able to assert  
23 claims for that, but that, I think, effectively just reduces  
24 the U.S. Bank claim and moves it over to their claim.

25 THE COURT: Right. I mean, that's the part of it

1 that I've been puzzling over because I think that that's  
2 exact -- would exactly be the effect. But the way you just  
3 articulated the operation of 520(e)(1)(B), that part was  
4 unclear to me.

5 In other words, the notion that -- I don't  
6 understand the point of 502(e)(1)(B) if then they incur  
7 later out of pockets. If we all agree that they then get to  
8 assert a claim in that amount, putting aside the subrogation  
9 point, then we're not fighting over it. What are we  
10 fighting over?

11 MR. SIEGEL: Well, I mean, one of the things we're  
12 fighting over is the fact they filed a claim for over a  
13 billion dollars and simultaneously there's a claim being  
14 filed by the trust and they're with respect to the same  
15 losses, and the estate has to make payments and they have to  
16 make payments to people who have allowed claims at the time  
17 they have allowed claims.

18 And if in the future things change, one would  
19 think -- and this is, of course, assuming the validity of  
20 everybody's claim. One would think that all this is is a  
21 bookkeeping maneuver, ultimately, which would -- what would  
22 happen would be U.S. Bank would agree to reduce its claim,  
23 if everybody's claim is valid. Syncora's claim would be  
24 increased, and the only thing that the trustee would have to  
25 do would be to just make an adjustment in the distribution

1 schedule.

2 Now, by the way -- and that's really not for today  
3 -- we don't even know, assuming the validity of the claims,  
4 the fact that they'll be getting reimbursements out of the  
5 waterfall how that might affect the numbers there in any  
6 event. I would suggest that because of 509(c) that they're  
7 going to be subordinated in any event to the trust; that's  
8 what essentially happens is all the payments are going to be  
9 directed into the trust. They will flow through the  
10 waterfall, and if, at some point in time, the trust is made  
11 whole as to whatever claim it has, then Syncora's  
12 subordinated claim could get a dividend.

13 I mean, in this case that's unlikely, but that's  
14 the way the statute is designed to work. Does --

15 THE COURT: No. That makes complete sense to me.  
16 But what I'm -- I'm still tripping over is no one should be  
17 taking the position that there should be duplicative allowed  
18 claims, right; that there should be double payment of any  
19 kind?

20 MR. SIEGEL: We agree.

21 THE COURT: Right. So I don't understand how we  
22 have enough information at this moment in time to do much of  
23 anything. That's the part that I'm having a hard time  
24 understanding. I think that the -- we can clearly recognize  
25 that there shouldn't be double counting for the 527.

1 MR. SIEGEL: Right. Okay.

2 THE COURT: But if as time rolls forward 527 turns  
3 out to be the last penny that Syncora pays out, and Lehman  
4 were to prevail in its defense that it did nothing wrong,  
5 then -- and we'll talk to the Syncora folks about this when  
6 it's their turn, but then it would seem to me that there is  
7 no claim against LBHI.

8 MR. SIEGEL: What I would say, Your Honor, is  
9 there's a few things going on here.

10 So, first of all, if they are saying and they're  
11 conceding that there's a claim for 527 right now and that  
12 the rest of it may or may not mature into being a claim in  
13 the future, that's fine. In the meantime, we have a reserve  
14 for their claim at, what is it, \$1.3 billion. We fully  
15 reserved their claim, and we've also reserved based upon the  
16 U.S. Bank claim. So the estate is holding onto a lot of  
17 funds based upon a claim that we don't think -- we think  
18 it's one claim and we just have to whack it up between two  
19 entities.

20 So, first of all, we think the reserve is grossly  
21 too high and we want to get that taken care of.

22 THE COURT: Right.

23 MR. SIEGEL: The second thing is in the meantime  
24 we need to know who to pay money to when we make  
25 distributions. So who do we pay money to? We think that

1 who we pay money to is we pay money to the trust and that  
2 the 527 claim is simply subordinated and that the trust  
3 takes the money, pays it out in accordance with its  
4 waterfall, assuming that they prove their claim against the  
5 estate.

6 And then at that point the losses that they will  
7 have to pay will be dependent upon how much they get out of  
8 the trust, and to the extent to which other funds flow  
9 within the trust, the extent to which they are actually  
10 required to go out of pocket to make future payments. That  
11 works however the waterfall requires it to work.

12 But in the meantime, we have a bunch of other  
13 creditors who are entitled to receive distributions and we  
14 want to be able to pay them fairly and move forward in a way  
15 that makes sense and is fair. What we don't think is that  
16 the ultimate numbers, even if we assume the validity of all  
17 of these claims, the claim can't exceed the aggregate of  
18 losses that the trust has and would -- might ultimately  
19 experience.

20 THE COURT: Right.

21 MR. SIEGEL: Right now we have two claims that are  
22 asserting the same thing and, therefore, we've double  
23 reserved.

24 THE COURT: Right.

25 MR. SIEGEL: And it's effecting our distributions.

1 One of the major --

2 THE COURT: So you've reserved for the Syncora  
3 claim --

4 MR. SIEGEL: Yes.

5 MR. SIEGEL: -- and you've reserved for the trust  
6 claim?

7 MR. SIEGEL: That's right.

8 And this is a basis upon which to alter the  
9 reserves and free up a lot of cash.

10 THE COURT: But that's -- but that's not the  
11 request that I have. I mean, that seems to me that that  
12 request is, frankly, a no-brainer --

13 MR. SIEGEL: Uh-huh.

14 THE COURT: -- because we're definitely not going  
15 to pay twice. But that's not -- at least I'm not reading  
16 that into the papers.

17 MR. SIEGEL: Well, the effect of our being  
18 successful on this motion would be exactly what I described.  
19 We could, if I'm understanding Your Honor, instead -- and I  
20 would have to talk to my client about this.

21 THE COURT: Right.

22 MR. SIEGEL: Instead, simply agree to -- you know,  
23 to defer this and instead just reduce the reserve to a one-  
24 claim reserve while we litigate over everything else.

25 THE COURT: Well, the one claim -- the outside



1 number is the billion-three, is it not?

2 MR. SIEGEL: I don't think that's right because  
3 the billion-three assumes no recovery at all with respect to  
4 the mortgages.

5 THE COURT: Right. But that's why I mean it's the  
6 outside number. There could be no larger --

7 MR. SIEGEL: No, because these mortgages have  
8 already had recoveries.

9 THE COURT: So you're saying that's too high a  
10 number.

11 MR. SIEGEL: Yes. I mean, we would have to figure  
12 out how much these mortgages actually have paid. Even if  
13 they're deficient, they've paid and there would be some  
14 number, but I expect it would be less than a billion.

15 THE COURT: I'm sorry. But I -- I guess what I'm  
16 trying to get at is right now we're holding a billion-three  
17 because that's the face amount of the trust claim, right?

18 MR. SIEGEL: No. The trust claim is smaller. The  
19 trust claim -- remember, when I started I said the trust  
20 claim was 647,550 because it includes some factor for  
21 mitigation and for the value of the existing mortgages, as I  
22 understand it.

23 THE COURT: Okay.

24 MR. SIEGEL: But the Syncora claim is for the  
25 original face amount of the certificates, which is 1.3,

1 which doesn't taken into consideration that there have been  
2 recoveries with respect to some of these mortgages.

3 THE COURT: But --

4 MR. SIEGEL: Actually, it doesn't -- it's got two  
5 pieces to it and I think I now understand why I'm confusing  
6 you, at least in this instance.

7 Okay. The actual losses are 527.

8 THE COURT: The -- well, the --

9 MR. SIEGEL: The --

10 THE COURT: -- Syncora's paid out 527.

11 MR. SIEGEL: That's right. Syncora's paid out  
12 527.

13 THE COURT: Right.

14 MR. SIEGEL: The trust has asserted 647 which I  
15 believe represent actual losses and their projected future  
16 losses in connection with what they assert to be their rep  
17 and warranties.

18 THE COURT: And that 647 includes the 527 or no?

19 MR. SIEGEL: I believe it -- it does or it should.  
20 Yes.

21 The remainder of the Syncora claim is the  
22 principal balance that is owed with respect to the insured  
23 certificates. The trust is not asserting that remainder  
24 claim either because they calculate their projected future  
25 losses differently or because they simply don't believe

1 they're entitled to that claim. But I believe the 527 has  
2 to be subsumed within the 647 because they're both losses  
3 with respect to the same mortgages.

4 But we're reserving the entire 1.3 on Syncora  
5 because the reserve for Syncora on the 1.3 is the entire --  
6 is the asserted amount of their claim which is essentially,  
7 we're entitled to be paid the entire amount we insured  
8 without respect to any credit for the value of the  
9 recoveries that the trust -- the trust that we insured  
10 receives.

11 So in some ways, I mean, I -- it suggests to me  
12 that they're asserting that they insured -- they insured 1.3  
13 billion in certificates. If it turns out that the  
14 certificate holders only suffered 700 million of losses --

15 THE COURT: Right.

16 MR. SIEGEL: -- that's all they would pay out, but  
17 they're suggesting they still have a claim for 1.3 billion.  
18 That's what it --

19 THE COURT: Well, what --

20 MR. SIEGEL: -- seems to me.

21 THE COURT: -- that -- but that goes to the  
22 question of hypothetically if they alleged a claim for the  
23 breaches of the reps and warranties or the put back claim,  
24 I'm trying to imagine how there could be damage beyond the  
25 losses.

1 MR. SIEGEL: I agree with you, and what I'm saying  
2 is --

3 THE COURT: So there --

4 MR. SIEGEL: -- from what I can see in front of me  
5 --

6 THE COURT: Right.

7 MR. SIEGEL: -- the trust is asserting that their  
8 losses all in, including projected future losses, would be  
9 647. They are asserting that they're not -- they didn't  
10 make the calculation. What they did was they simply put in  
11 a claim for the entirety of their insured amount.

12 So the disparity on the unpaid amount is the  
13 difference between the calculation the trustee made with  
14 respect to what I would think are future losses they expect  
15 to experience with respect to these certificates and Syncora  
16 simply saying, I'm not making that calculation. I'm just  
17 asserting for the balance on the notes. That's the  
18 difference between the two there.

19 So I don't know -- and if it's worthwhile, because  
20 I think I'm hearing Your Honor and the direction that you  
21 think you might like this to take, if I could have a few  
22 minutes we could talk and see if maybe there is some other  
23 resolution we could work out.

24 THE COURT: That might be a good idea.

25 MR. SIEGEL: Okay. Thank you.

1 THE COURT: All right. You want to -- I mean, I -  
2 - I -- I will hear from Syncora as much as you would like  
3 either now or after you confer with -- with Mr. Siegel. I'm  
4 just -- I'm trying to figure out as a practical matter why  
5 there isn't some sort of a threshold disposition that deals  
6 with what clearly to me seems to be an over reserve  
7 situation. And if we can cut through that, then -- and not  
8 prejudice anyone's rights, then that would be a good thing.

9 MR. CRAIG: I think that makes a lot of sense,  
10 Your Honor. I think we should talk and come back to the  
11 Court.

12 THE COURT: Okay. All right. We'll go back  
13 across the hall and someone can come and get us when --

14 MR. SIEGEL: We'll do that.

15 THE COURT: -- when you're done.

16 MR. SIEGEL: Thank you.

17 THE COURT: Okay.

18 MR. CRAIG: Thank you, Your Honor.

19 THE COURT: Very good.

20 (Recess taken at 2:39 p.m.; resumed at 3:24 p.m.)

21 THE COURT: I will be very impressed, Mr. Siegel,  
22 if you've worked this out.

23 MR. SIEGEL: Well, we've accomplished what we  
24 think we can accomplish today.

25 THE COURT: Okay.

1 MR. SIEGEL: And I will describe that to you.

2 THE COURT: Okay.

3 MR. SIEGEL: I will also tell you what we hope to  
4 accomplish going forward.

5 THE COURT: Okay.

6 MR. SIEGEL: And let's go to what we think we can  
7 accomplish today or what we have accomplished today.

8 THE COURT: Okay.

9 MR. SIEGEL: Syncora has agreed that with respect  
10 to their claim that they will agree that their claim -- that  
11 their reserve will be dropped to 600 million.

12 THE COURT: Okay.

13 MR. SIEGEL: The --

14 THE COURT: So for the -- that will free up 700  
15 million?

16 MR. SIEGEL: That's right.

17 THE COURT: Okay.

18 MR. SIEGEL: That will free up \$700 million. That  
19 translates into some pennies per dollar in terms of cash,  
20 but that's correct.

21 MR. CANTOR: Just (indiscernible). We're talking  
22 -- those are claim dollars.

23 THE COURT: Yes. Those are claim dollars.

24 MR. CANTOR: That's right. And --

25 MR. SIEGEL: Yes.

1 MR. CANTOR: -- that's a much smaller amount --

2 THE COURT: Yes.

3 MR. CANTOR: -- (indiscernible).

4 THE COURT: And for the record, that was Mr.  
5 Cantor speaking.

6 MR. CANTOR: Sorry.

7 MR. SIEGEL: My client.

8 THE COURT: Yes. I'm aware.

9 MR. CRAIG: Claim dollars off the reserve.

10 MR. SIEGEL: That's --

11 THE COURT: Yes. Okay. So let's --

12 MR. SIEGEL: I mean, it's not a final --

13 THE COURT: -- let's --

14 MR. SIEGEL: -- determination of the claim.

15 THE COURT: -- let's state it very precisely.

16 There is currently a reserve of \$1.3 billion for that -- for  
17 the Syncora claim.

18 MR. SIEGEL: That's right.

19 THE COURT: We are reducing -- you are saying that  
20 the proposal is to reduce the amount of that reserve to six-  
21 hundred-plus-million-dollars, correct?

22 MR. SIEGEL: That's correct.

23 THE COURT: Okay.

24 MR. SIEGEL: We have also agreed -- and that  
25 agreement is because that's as far as we think we can go

1 today based on the facts available --

2 THE COURT: Okay.

3 MR. SIEGEL: -- to us today.

4 We've also agreed that the estate will not seek to  
5 further reduce the reserve for 60 days. What we are going  
6 to do in that period of time is we are going to try to  
7 understand the other amounts that have been received by  
8 Syncora that mitigate its loss --

9 THE COURT: Okay.

10 MR. SIEGEL: -- so that it can better reflect the  
11 actual loss that they've experienced.

12 THE COURT: Okay.

13 MR. SIEGEL: Additionally, we expect that --

14 THE COURT: So that's going to cabin the outside  
15 -- the outside number or --

16 MR. SIEGEL: Right.

17 THE COURT: Right?

18 MR. SIEGEL: That's right.

19 THE COURT: Okay.

20 MR. SIEGEL: That is -- the number will never --  
21 the reserve number will never go above that.

22 THE COURT: Okay.

23 MR. SIEGEL: The reserve number can go down  
24 further depending upon our further discussions and  
25 understanding -- I'm sorry. I'm told that we agreed to 90,



1 not 60 days with respect to reconsidering --

2 THE COURT: Okay.

3 MR. SIEGEL: -- the reserve.

4 THE COURT: All right.

5 MR. SIEGEL: My natural aggressiveness took over,  
6 apparently.

7 THE COURT: Okay.

8 (Laughter)

9 THE COURT: All right. So as you keep going, Mr.  
10 Siegel, I -- are you -- would it be the parties' preference  
11 to submit an order reflecting what you're telling me or do  
12 you want to have statements on the record and then have my  
13 so order the record. I'm --

14 MR. SIEGEL: I think --

15 THE COURT: -- indifferent.

16 MR. SIEGEL: I think that we are satisfied so  
17 ordering the record.

18 THE COURT: Okay. Then we're going to -- when all  
19 is said and done, then I'm going to ask you to go back and  
20 have a very precise statement of exactly what it is --

21 MR. SIEGEL: Okay.

22 THE COURT: -- because we've now had a couple of  
23 backs and forths.

24 MR. SIEGEL: Understood.

25 THE COURT: Okay. All right. So let me let you

1 keep going.

2 MR. SIEGEL: Okay. So what we are going to do  
3 after today is, as I said, we will due diligence with the  
4 cooperation of Syncora figuring out what the actual out of  
5 pocket losses are. And, of course, they remind us that they  
6 are paying out claims also as it goes forward, so this is a  
7 moving target. They are getting reimbursements, but they  
8 are also paying out at the same time. So some things,  
9 stated a little differently, move from the 502 to the 509  
10 category from our standpoint. But that's an ongoing  
11 process.

12 THE COURT: Right.

13 MR. SIEGEL: Additionally, we are going to talk to  
14 -- all of us are going to talk to U.S. Bank about their  
15 reserve and how to better reconcile their claims as we're  
16 going through this process as well. We have made no  
17 commitment to U.S. Bank and we've not spoken to about when  
18 we might move to reduce their reserve. They're just not  
19 here and they're not a party to any of this.

20 THE COURT: Understood. Okay.

21 MR. SIEGEL: But we are going to get them involved  
22 in the discussion so we can try and rationalize --

23 THE COURT: Right.

24 MR. SIEGEL: -- at least what the estate views as  
25 two competing claims to find some fair way to deal with

1 distributions.

2 IN the meantime, we will withdraw the motion that  
3 is in front of -- I guess everyone is going to withdraw the  
4 motions that are before the Court on summary judgment and  
5 the adversary proceeding without prejudice to re-file at  
6 some point in the future if we can't work things out. So  
7 that will just get marked off the calendar.

8 THE COURT: Okay.

9 MR. SIEGEL: I believe, someone can tell me  
10 otherwise, I believe that's the sum total of our agreement.

11 THE COURT: Okay. I think that makes -- that's a  
12 very practical and finely tailored solution.

13 So I think it just remains for you to state with  
14 precision the amount to which the reserve is going to be  
15 reduced.

16 MR. SIEGEL: Okay. I just --

17 THE COURT: All right.

18 MR. SIEGEL: They're consulting --

19 MR. CANTOR: We're just conferring briefly.

20 THE COURT: Okay.

21 MR. SIEGEL: Yeah. Okay. Just -- let's give  
22 them an opportunity.

23 (Pause)

24 MR. CRAIG: Your Honor, John Craig, Allegaert,  
25 Berger & Vogel --

1 THE COURT: Yes.

2 MR. CRAIG: -- for Syncora.

3 That generally comports with our understanding,  
4 too.

5 THE COURT: Okay.

6 MR. CRAIG: The only thing that I would add is  
7 that, you know, obviously, our reasonable cooperation with  
8 information about Syncora's losses --

9 THE COURT: I'm sorry.

10 MR. CRAIG: Of course. Our reasonable cooperation  
11 with information about Syncora's losses is not a blank check  
12 to open Syncora's books and provide everything that they  
13 might want.

14 MR. SIEGEL: We're going to try and work this out  
15 amicably.

16 THE COURT: Right.

17 MR. SIEGEL: If we're dissatisfied with our  
18 ability to work it out amicably, there are other ways to  
19 work it out.

20 THE COURT: Right.

21 MR. SIEGEL: It's that simple.

22 THE COURT: Right.

23 So could we have an exact statement to the dollar  
24 --

25 MR. SIEGEL: Okay.

1 THE COURT: -- if not to the penny of the amount  
2 of the reserve that will be outstanding.

3 MR. SIEGEL: Okay. I think the exact amount is  
4 \$600 million even. Is that right?

5 MR. CRAIG: That's correct.

6 MR. SIEGEL: Okay.

7 THE COURT: Okay.

8 MR. SIEGEL: So -- and we agree that for 90 days  
9 we will not seek to further reduce the reserve or change  
10 their reserve.

11 THE COURT: Okay.

12 MR. SIEGEL: And we've withdrawn the motions  
13 without prejudice on both sides.

14 THE COURT: And this is the reserve for the  
15 Syncora claim.

16 MR. SIEGEL: Just for the Syncora claim.

17 THE COURT: Just for the Syncora --

18 MR. SIEGEL: We are advising the Court that we  
19 intend to bring U.S. Bank into the process and that we and  
20 Syncora both expect to speak to U.S. Bank about this --

21 THE COURT: Very good.

22 MR. SIEGEL: -- as well. That's the entirety of  
23 this motion.

24 THE COURT: All right. All right.

25 Does anyone else wish to add anything?

1 MR. CRAIG: No, Your Honor.

2 THE COURT: Okay. All right. Then I'm going to  
3 so order the record with respect to all of those points.  
4 And I very much appreciate your cooperation in getting to  
5 this good practical result and we'll wait to hear from you  
6 again.

7 MR. SIEGEL: Thank you, Your Honor.

8 THE COURT: All right. Thanks for coming in.

9 MR. CRAIG: Thank you, Your Honor.

10 THE COURT: Thank you.

11 (Whereupon, these proceedings were concluded at 3:31  
12 p.m.)

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(Whereupon, these proceedings concluded at 3:31 p.m.)

I N D E X

RULINGS

DESCRIPTION	PAGE	LINE
Doc. #42754 Motion of Lehman Brothers Holdings, Inc. Pursuant to Bankruptcy Rule 9019 for Approval of Settlement Agreement Regarding Claims of Federal Home Loan Mortgage Corporation Filed by Alfredo R. Perez on behalf of Lehman Brothers Holdings, Inc.	8	21
Adversary Proceeding: 13-01341-scc Lehman Brothers Holdings, Inc. v Syncora Guarantee, Inc. Doc. #16 Lehman Brothers Holdings, Inc.'s Notice of Motion and Motion for Summary Judgment of Its Adversary Complaint Against Syncora Guarantee, Inc. filed by Glenn E. Siegel on behalf of Lehman Brothers Holdings, Inc.	--	--



C E R T I F I C A T I O N

I, Sherri L. Breach, CERT\*D-397, certified that the  
foregoing transcript is a true and accurate record of the  
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Sherri L  
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